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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,897	03/29/2004	Leonid Landa	3691-690	1098

23117 7590 12/03/2004

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EXAMINER	
GROUP, KARL E	

ART UNIT	PAPER NUMBER
1755	

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,897	LANDA ET AL.	
	Examiner	Art Unit	
	Karl E. Group	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 79-92 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 79-92 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3-29-04, 8-30-04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Specification

1. Applicants are requested to amend the continuing data in the specification to reflect the current status of the parent applications.

Claim Rejections - 35 USC § 102 and 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 79-92 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Japanese document 11-60269. The Japanese document teaches a soda lime silica glass including less than .05% iron oxide, .3-.6% cerium oxide and .02-.07% erbium oxide as a decolorant. The second example in the table on page 2 shows .3% cerium oxide with a visible transmission of ' 91 .05. The amounts of CaO and Na2O in the claims are convention amounts of these components for soda lime silica glasses. See Janakirama Rao (3,652,303) as evidence. The claims are considered anticipated or in the alternative the subject matter as a whole would have been obvious to one having ordinary skill in the ad at the time of the invention to have selected the overlapping portion of the range disclosed by the

prior art because overlapping ranges have been held to be a prima facie case of obvious, see In re Malagari, 182 U.S.P.Q 549.

5. Claims 79-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima et al (6,461,736) or Nagashima (6,548,434) further in view of Japanese document 11-60269.

Nagashima et al teach a high transmittance sheet glass having less than .06% total iron Oxide and further including 0-.45% cerium oxide, column 3, lines 12-20 in '434 and the examples in Tables 1-2 in '736. Nagashima and Nagashima et al fail to include erbium oxide in the glass composition.

The Japanese reference teaches a soda lime silica glass where the yellow tint from the iron oxide and cerium oxide is removed by adding a colorant including .02-.07 wt% erbium oxide.

It would have been obvious to one of ordinary skill in the art at the time of the invention to further include erbium oxide in the compositions of Nagashima and Nagashima et al because the Japanese document teaches any color caused by the addition of iron oxide and cerium oxide is removed. Both Nagashima patents are high transmittance glasses, which the transmittance would be improved by the removal of any color.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 79-92 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim1-21 of U.S. Patent No. 6,610,622. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the patented claims and the instant claims overlap. The patented claims do not teach the exact same proportions as recited in the instant claims.

However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

> "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages", In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05.

8. Claims 79-92 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 81-90,94 of copending Application No. 10/457552. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the copending claims overlap, see above double patenting rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 79-92 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 139 of copending Application No. 10/785716. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the copending claims overlap, see above double patenting rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl E. Group whose telephone number is 571-272-1368. The examiner can normally be reached on M-F (6:30-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karl E Group
Primary Examiner
Art Unit 1755

Keg
12-2-04